

CULPABLE HOMICIDE STRUCTURE

ISSUE STATEMENT

Will X be liable for murder/manslaughter under s168/171 after X...?

STEP 1: IS IT HOMICIDE?

- 1) Section 158
 - a. Killing of a human being by another
 - b. Directly/indirectly by any means
 - c. 'But for' factual causation (*Myatt*)
 - d. Note s164: Acceleration of death.
 - i. Still a crime
 - e. Double effect
 - i. *Seals* case: Did the doctor administer the drug knowing that there was a substantial risk of death, but only intends to relieve pain?
 - ii. Policy reasons
- 2) Issues: No corporate homicide, when do fetuses become humans?

STEP 2: IF YES, IS IT CULPABLE HOMICIDE? S 160(2)

Homicide that is not culpable is not an offence. Culpable homicide that is not found to be murder, will at least be manslaughter. In this case A:

If subsection 2 is satisfied, it will be either murder or manslaughter unless it is infanticide. It will be murder if you satisfy the further MR states in s167, 165.

Under s162, did it occur within a year and a day after the cause of death?

S160(2)(A): UNLAWFUL ACT MANSLAUGHTER

Under s160(2)(a), X can be liable for culpable homicide if committed in the course of an unlawful act.

- 1) **Identify predicate offence**
 - a. Definition of unlawful act:
 - i. Section 2 of Crimes Act: *Unlawful act means a breach of any Act, regulation, rule or bylaw*
 - ii. *Myatt*: Boating case where he didn't follow the bylaws of the river. Tried arguing that purpose of provision was not for public safety, it was to prevent erosion. If the act is objectively dangerous that will still be enough, doesn't matter if primary purpose is public safety'
 - iii. *Lee, Myatt*: The predicate offence must be dangerous.
 1. Likely to do harm
 2. Must be more than trivial.
 - a. Asses Actus Reus:
 - b. Assess Mens Rea: Intention, recklessness, negligence
 - i. S150A: gross negligence is standard, it is a major departure from duty owed).
- 2) Is the predicate offence satisfied?

- 3) Did the predicate offence/unlawful act actually cause the death?
 - a. *Myatt*: Was the unlawful act a substantial and operating cause of death?

S 160(2)(B): NEGLIGENT MANSLAUGHTER (OMISSIONS)

- 1) *Firstly, it must be established that X has a relevant common law or statutory duty.*
 - a. Can be at common law (unlikely, but good to be aware of)
 - i. Assumption of responsibility:
 - ii. Special relationship:
 - iii. Defendant creates the harm (Miller):
 - iv. Virtue of position:
 - b. Statutory Duties:
 - i. 151: Duty of provide necessities and protect from injury
 - ii. 152: Duty of parent to provide necessities and protect from injury
 - iii. 155: Duty of persons doing dangerous acts
 1. *Myatt*: Dangerous to life means reasonable possibility of death
 - iv. 156: Duty of persons in charge of dangerous things
 - v. 157: Duty to avoid omissions dangerous to life
- 2) *It has been established that X has a common law/statutory duty. It needs to be assessed whether X neglected to omit or perform that duty.*
 - a. Just a factual causation test. Did they not do what they were supposed to do?
Because of question below, establish very clearly what they did, and what they were supposed to do.
- 3) *Next it must be assessed whether the omission or neglect was a **major departure** from the standard of care expected of a reasonable person to whom that legal duties applies in those circumstances?*
 - a. *Q*: Is it gross negligence as per s150A?
 - b. *Q*: Major departure has to be in relation to the death
 - c. *Hamer*: Personal characteristics are irrelevant
 - d. Was there any **lawful excuse** to neglect/omit to perform the duty?
- 4) Causation
 - a. *Myatt*: Was the unlawful act a substantial and operating cause of death?

CONCLUSION ON S160(2)

If unlawful act or negligence manslaughter are satisfied, the defendant has committed culpable homicide and will be guilty of at least manslaughter.

Murder can now be assessed.

MURDER

*The distinction between murder and manslaughter lies in the state of mind of the killer when he or she acts or omits to act. **So when one of these states of mind are present, it will be manslaughter.***

SECTION 167: MURDER DEFINED

Culpable homicide is murder in each of the following cases:

S167(a): *“if the offender means to cause the death of the person killed”*

1. MR: Assess different types of intention
 - a. Direct intention
 - b. Means to an intention
 - c. Oblique intention / Wollen intention
 - i. Was death of serious bodily injury a virtual certainty as a result of the defendants actions?
 - ii. Did the defendant believe this was the case?

Facts of Wollen: Father lost temper because of crying, threw baby onto hard surface. Charged with murder.

S167(b): *“If the offender means to cause to the person killed any bodily injury that is known to the offender to be likely to cause death, and is reckless whether death ensues or not”*

1. Did the defendant **intend** to cause bodily injury? AND
2. Did the defendant **believe it was likely** to cause death? AND
3. Was the defendant **reckless** as to whether death ensued or not?

S167(d): *“If the offender for any unlawful object does an act that he or she knows to be likely to cause death, and thereby kills any person, though he or she may have desired that his or her object should be effected without hurting anyone”*

1. Was there an unlawful act/purpose
 - a) *Shadrock*: Has to be criminal
2. Fatal act must be distinct from the unlawful purpose
3. *Shadrock*: The fatal act must be for the unlawful purpose
 - a) Was the act sufficiently proximate (temporarily + spacially)
4. Did the defendant have knowledge that the act was likely to cause death? Was there an appreciation of the risk?

SECTION 168 MURDER: FURTHER DEFINITION OF MURDER

This section is aimed at protecting police. Its circumstances are limited, but it is aimed at widening liability.

1. Did the defendant intent to cause greivous bodily harm?
2. Was it in the commission of one of the offences listed in s168(2)?
 - a) *Rapira*: Aggravated robbery is added to this list.
3. No need for the defendant to know that death was likely to ensue.